

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

|                                 |   |                               |
|---------------------------------|---|-------------------------------|
| JEFFRE J. JENKINS,              | ) |                               |
|                                 | ) |                               |
| Petitioner,                     | ) |                               |
|                                 | ) |                               |
| v.                              | ) | CIVIL ACTION NO. 05-PT-1533-S |
|                                 | ) |                               |
| JUDGE HERRINGTON, ROBBY OWENS,  | ) |                               |
| SHELBY COUNTY DISTRICT ATTORNEY | ) |                               |
| ATTORNEY GENERAL FOR THE STATE  | ) |                               |
| OF ALABAMA,                     | ) |                               |
|                                 | ) |                               |
| Respondents.                    | ) |                               |

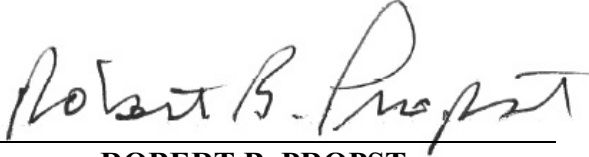
MEMORANDUM OF OPINION

On December 7, 2005, Jeffre Jenkins, petitioner, filed an objection to the Magistrate Judge's Findings and Recommendation. On December 8, 2005 Jenkins filed page 3 of his objection. On December 13, 2005, Jenkins filed an additional objection. The magistrate judge recommended that the petition be dismissed without prejudice due to petitioner's failure to exhaust his available state court remedies. Petitioner was informed that he could still file a petition for writ of mandamus in the Alabama Court of Criminal Appeals and was provided with copies of Rule 21 and Form 19, Alabama Rules of Appellate Procedure. In his objection, petitioner complains that he had sought help in state court but that the clerk's response showed that he could not personally exhaust the state court remedy but could only do so through counsel. The Shelby County Circuit Court clerk responded to a letter by petitioner in pertinent part as follows:

Mr. Jenkins: In answer to your letter requesting information on filing a writ of mandamus: The clerk's office is not allowed (by law) to offer legal advice. You will need to contact an attorney for legal help. (Doc. # 8, Exhibit C).

This court has advised petitioner that his state court remedy lies with the Alabama Court of Criminal Appeals – NOT with the Shelby County Circuit Court. Petitioner has not provided the court with evidence or allegations indicating that he has attempted to exhaust his state remedies by filing a petition for writ of mandamus in the Alabama Court of Criminal Appeals. Petitioner's objections are due to be overruled. A separate order consistent with the Memorandum of Opinion will be entered simultaneously herewith.

As to the foregoing it is SO ORDERED this the 22<sup>nd</sup> day of December, 2005.

  
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**ROBERT B. PROPST**  
**SENIOR UNITED STATES DISTRICT JUDGE**